

24th May 2024

PROCUREMENT REFORM UPDATE

Purpose

1. To brief members on the current procurement reforms.

Background

2. The United Kingdom's exit from the European Union created an opportunity to develop and implement a new procurement regime. The Procurement Act is intended to help grow the economy by creating a simpler and more transparent system that will deliver better value for money, reducing costs for business and the public sector. The Procurement Act received Royal Assent in late October 2023 and is expected to come into force in October 2024.
3. Procurement is a devolved competence. Welsh Ministers have however agreed via Legislative Consent Memoranda to collaborate with UK Government on the Procurement Act and the Welsh application is the same as in England. However, there are important differences.
4. In Wales, councils are required to have due regard for the [Wales Procurement Policy Statement](#). Procurement reform in Wales combines the changes being introduced through the Procurement Act with the Social Partnerships and Public Procurement (Wales) Act, the Healthcare Procurement (Wales) Act, and related policy for Wales, including the net zero carbon ambition, to make one set of reforms that are being implemented together.
5. The key dates are set out below:
 - Public consultation on secondary legislation August 2023
 - Bill finished in Houses of Parliament (Royal Assent) October 2023
 - Secondary legislation laid in Parliament & Senedd Spring 2024
 - Policy guidance roll-out (six-month programme) Spring 2024
 - Implementation & training period begins Spring 2024
 - Application of new rules begins 28 October 2024

Detailed Consideration

Resourcing Change

7. Experience from the 2015 reforms tells us that the new freedoms proposed will not materialise, if we continue to work with the methods, systems and processes established for earlier regimes.
8. Efforts to improve procurement in Wales have done much to make collaboration possible and for us all to work better as a result; but our resources like all council resources are pressured.
9. The WLGA National Procurement Network will continue to help councils utilise the changes in the procurement rules to deliver better outcomes for Welsh communities. We must however also be realistic about our practical limitations. It is likely that substantial opportunities enabled by the procurement reforms will not be delivered.

Current Challenges

10. The following provides an indication of current challenges. The list is not comprehensive or complete; but it does highlight what's pressing right now:
11. **Contract Management capability** in councils is a particular concern because much of the added value and leverage for policy delivery in the new reforms comes from better contract management. Training is available and in some councils being undertaken at scale; but it is in general a weak and underdeveloped area of practice.
12. **Procurement capacity** is focused on a small cohort of officers who are adapting to new demands and new processes. Ultimately though, the lack of capacity will limit what can be done.
13. **Gaps in central provision.** Our Welsh Government partners are likewise working with what they have rather than what they need. We cannot afford to be passive recipients of guidance; we must work with Welsh Government officials in common purpose. The better we do this, the better we might be in mitigating those gaps.
14. **Last minute provision.** Welsh public services are collectively dependent on UK Government for support services to the Procurement Act, including training materials and central ICT systems. In Wales, we, with our Welsh Government colleagues, are doing all that can be done to work in parallel and to anticipate what's coming.
15. **Confidence in ICT systems readiness is low;** with a late surge likely to be required if systems are going to be ready in time for implementation. This does not bode well for readiness or functionality. Our operational procurement teams are depending on these systems to work.
16. **Indicators and Measures are not ready.** Welsh Government is developing organisation level indicators and measures to support new Welsh legislation. After being delayed by Brexit and the Covid-19 response, work has resumed to develop Regulations which will need to be applied in procurement, as they will at organisation level.
17. The Public Health (Wales) Act 2017 will require specified public bodies to carry out Health Impact Assessments in certain circumstances. In this regard, Wales will

become one of the first countries in the world to place Health Impact Assessments on a statutory footing. Recent consultation set out to address what Ministers want to consider; to whom the regulations apply; when the regulations will apply; how a Health Impact Assessment should be conducted; publishing a Health Impact Assessment and the role of Public Health Wales. We are assured that this work is well underway, as well as might be expected; but we do not yet know what the new statutory responsibilities will require.

18. The Social Partnerships and Public Procurement Act 2023 places a statutory duty on certain public bodies, including councils, to consider socially responsible public procurement when carrying out procurement, to set objectives in relation to well-being goals, and to publish a procurement strategy. Contract management duties will ensure that socially responsible outcomes are pursued through supply chains. Reporting duties will be imposed on the public bodies in relation to the Social Partnership Duty and Procurement duty.
19. The Welsh Government is presently consulting with public bodies to procure an acceptable platform to be able to measure the Wellbeing Impacts, Community Wealth and Social Value outcomes across the Welsh Public Sector. This will enable qualitative and quantitative measured outcomes to be reported. The WLGA's officer network has shared their concerns in relation to the length of time that has been spent so far in trying to arrive at a solution.
20. **Wellbeing Impacts Leadership needs to establish.** Wellbeing Impacts are broadly equivalent of Social Value, a policy that has transformed procurement in England. In the absence of central support, Welsh councils undertook a programme to improve procurement by adopting the lessons learned from English councils, including the pilot of new tools and techniques. This has created beneficial local communities of provision, with considerable success.
21. As one example, by adaptation of the Themes Outcomes and Measures (TOMs), a Welsh council secured over £10,000,000 in additional social value commitments from suppliers. This involves new activities that are nurtured within the supply relationship and assured through contract management with internal stakeholders.
22. National leadership has now been taken up by Welsh Government Commercial. This was welcome and much needed but had the unintended effect of stopping promulgation of the earlier initiatives by councils. The momentum for change that was building through Local Government was paused or stopped entirely. This new programme supports a long-term plan and has yet to deliver its objectives; it may be some time before the new programme delivers its objectives.
23. A pause is not ideal given current pressures on councils and for many organisations is completely unnecessary; but it is reality that those organisations are unwilling to invest further until they see what Welsh Government is going to provide.
24. **Awaiting new statutory guidance** which is being developed for the procurement reforms. It includes important Welsh policies. This is work in progress and scheduled for later this year. We are assisting in its preparation to ensure that it will be suitable for purpose and that councils have early engagement, so to be ready when the guidance applies.

25. Data Management. Transparency of data is one of the cornerstones of the procurement reforms. We do not know how the data that is intended to come with new reporting regimes is going to be used. There are opportunities in the use of the new data; but there are also risks in its misuse.

26. The WLGA is working with local government and practitioner colleagues in other sectors to address the above challenges.

Recommendations

27. Members are invited to:

27.1 Note and feedback any issues councils face in working towards procurement reform and raise question about the work of the WLGA National Procurement Network.

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